

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UINTAH COUNTY, STATE OF UTAH

Christian Mooseman, John Mooseman,)
William R. Collings, M. P. Born,)
John Merkley, Abraham Harris and)
F. A. Guy,)

Plaintiffs)

vs.)

The Whiterocks Irrigation Company,)
A Corporation,)

Defendants.)
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FINDINGS OF FACT

CONCLUSIONS OF LAW

and DECREE

This cause came on for hearing on this 1st day of December, A. D. 1911, upon the pleadings and evidence in said cause, T. W. O'Donnell, Esq., appearing as counsel for the plaintiffs herein and Peter Hanson appearing as counsel for the defendant, White Rocks Irrigation Company, a corporation, and the Court, after hearing the evidence of the witnesses adduced in behalf of the respective parties, and having considered the same, together with the files and pleadings in said cause and being now fully advised in the premises, now announces as his

FINDINGS OF FACT

/That the defendant is a corporation as alleged in the pleadings; that it is the owner of a right of way through certain Indian allotments all as set forth in the complaint herein and as hereinafter described; that the plaintiffs are the owners of 800 acres of land in the said County of Uintah, as set forth in the complaint. That the plaintiffs have no right of way or means of conveying water to said land except through artificial channels; that the defendant corporation has acquired by condemnation proceedings and by proper processes, a right of way for canal purposes, from the White Rocks River to the lands of the stockholders in the said defendant corporation, as set forth and described in the complaint; that the said plaintiffs are entitled to have condemned to their use, for the purpose of carrying certain waters of White Rocks River, owned by them, over said right of way of the said defendant corporation, a right of way over, through and upon the lands heretofore condemned to the use of the defendant corporation, upon payment by said plaintiffs of twelve eighty-seconds of the whole of the expense incurred by the said defendant company in obtaining its rights of way, to-wit Thirty five and 85/100ths (\$35.85) Dollars; that no damages have been shown, by the use of the

said right of way sought to be condemned herein; that the plaintiffs will have the right to run their water down the defendant's canal on paying the expenses that may be necessarily incurred in repairing or putting in a better condition the old river bed from the dam down to the head of their ditch; and they will be required to pay twelve eighty-seconds of the expense connected with the up keep of the old river bed and this company's canal as far as plaintiffs point of diversion, from this time on, until the further order of this court, and as long as they continue to exercise their right of usage therein.

That the defendant has proved no actual damages; that the defendants are entitled to their costs of suit herein; that the right of way sought to be condemned herein, is for a public use.

That the total expenses of the condemnation proceedings and other proceedings by which the said defendant corporation acquired said rights of way and land, amount to Two Hundred Forty-five and no/100 (\$245.00) Dollars, as was shown and offered by the evidence in this cause produced.

From the foregoing facts, the court now finds as

CONCLUSIONS OF LAW,

That the use for which the said right of way is to be condemned by this action is a public use; that no actual damages have been proven by the defendant herein; that the plaintiffs are entitled to have condemned to their use, a right of way through defendant's canal for the water of said plaintiffs and to enlarge the same sufficiently for this purpose, upon payment of 12/82nds of the expense incurred in the former condemnation suit and processes in obtaining right of way, amounting to \$35.85, and of their proportion of the expense incident to maintaining defendant's canal down to the head of the ditch of plaintiffs and all the expenses of putting in better condition the old river bed from the dam down to the head of their ditch; that defendant be awarded its costs of suit herein.

That the said plaintiffs are liable for 12/82nds of any amounts that may hereafter be paid by defendants in maintaining said canal through said allotments of government land, in bridging the same or fluming it, or streams over it, as required by the decree by which said right of way was condemned to the use of said defendants to plaintiffs point of diversion; that said plaintiffs are liable for the entire cost of enlarging said defendant's canal to a size sufficient to carry the water of plaintiffs herein to the head of their ditch and to such a size that

said canal will carry the water belonging to the defendant corporation or its stockholders.

Dated at Vernal, Utah this 30th day of March, 1912.

J. E. BOOTH

Judge.